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SUBJECT: KUWAIT: COMMENTS FOR 2007 SPECIAL 301 REVIEW

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¶1. (SBU) Kuwaiti government agencies sustained the level of IPR enforcement activity in 2006 that they demonstrated in 2005, and in some cases improved upon that performance. Kuwait Customs in particular continued to be the most aggressive and most competent agency in impeding the movement of pirated and counterfeit products. Protecting IPR remains a priority at the ministerial level and inspection teams from the Ministries of Commerce and Information have continued to conduct regular raids and seizures.

¶2. (SBU) As in past years, the division of responsibility for IPR protection among the Ministries of Information, Commerce, and Kuwait Customs continued to cause problems with unclear jurisdictional boundaries and inadequate information sharing. In mid-year, the GOK announced its decision to move copyright protection responsibility out of the Ministry of Information and consolidate all IPR enforcement (other than Customs) into the Ministry of Commerce, which previously held responsibility only for trademarks. This decision is a step in the right direction and holds out hope that the bureaucratic fragmentation which has long hampered enforcement may gradually dissipate. However, the announcement of the move triggered significant bureaucratic uncertainty as enforcement personnel at the Information and Commerce Ministries were kept in a holding pattern for the second half of 2006, unsure if they were to be transferred and how the new consolidated office might be organized. Because of this uncertainty, much of 2006 was something of a lost year for progress on IPR enforcement. At the time of this writing, the bureaucratic details - including budgets, personnel, and office space - have still not been finalized, and the new consolidated IPR office is still not on its feet.

¶3. (SBU) Although many of the same problems remain, including a TRIPS-non-compliant copyright law, weak penalties for violators, and a lack of inter-ministerial coordination, Kuwait performed adequately in 2006. Post therefore recommends that Kuwait remain on the Special 301 Watchlist. We are encouraged by the commitment, at the ministerial level, to IPR enforcement and by an increased willingness to prosecute violators, but remain frustrated at the lack of movement on key legislation. Post views Kuwait's IPR protection in two distinct spheres: at the ministries, enforcement personnel have made protecting IPR a priority; however, the lack of movement on legislation indicates that IPR is still not a priority at the higher levels of the GOK. We expect the consolidation move to the Ministry of Commerce to improve enforcement, but the true test of the GOK's commitment to IPR will be to pass the long-delayed TRIPS-compliant copyright law. In the 2007 Special 301 Report, Post encourages USTR to commend Kuwait's enforcement personnel, particularly Kuwait Customs, and to focus heavily on the need to pass the delayed legislation.

Optical Media Piracy

¶4. (SBU) The copyright industry claims that Kuwait's optical media piracy rate is over 90 percent, although the Ministry of Information disputes this figure. The Ministry of Information, however, does not compile its own statistics, and the industry figure is all that is available; from Post's observations, the industry number is probably accurate. Pirated optical media is imported into Kuwait in large quantities, but is also produced locally, as evidenced by several busts in which high-speed CD/DVD duplicating equipment was recovered. Anecdotally, vendors selling pirated DVDs, software, and video games tell Embassy officers that the discs are produced locally, and openly demonstrate the differences between imported discs (largely from China) that include cover art and those copied locally that have titles hand-written in permanent marker.

TRIPS Compliance

¶5. (SBU) Kuwait's 1999 copyright law is not TRIPS-compliant. The Ministry of Information has drafted extensive amendments to the law, which it believes will bring the law into conformity with international standards. As part of the TIFA process, USG experts have reviewed the 1999 law and have provided feedback for the Kuwaitis' consideration. The amendments to the copyright law, which have been in the drafting stage for more than three years, are still not finished, although the Ministry of Information claims they

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are nearly done. In September 2006, the Kuwaiti delegation to the TIFA meeting in Washington, DC provided a copy of the draft amendments to USTR. It is not clear at this point how the copyright office's move to the Ministry of Commerce will affect these amendments or the timeline for their completion and submission to Parliament.

¶6. (SBU) In 2004, the Ministry of Information submitted draft legislation to increase penalties for IPR violators, but the National Assembly has not taken up the bill for discussion. According to our interlocutors, as in 2005, all raids in 2006 resulted in cases being filed. Penalties are still weak, however, and the judiciary has yet to show a consistent willingness to sentence violators to time in jail. Post continues to believe that Kuwait's weak penalties, which usually consist of just a fine (up to \$1,700) and rarely include jail time, are a major contributing factor to the government's struggle to deter vendors of pirated and counterfeit goods.

Enforcement

¶7. (SBU) Lack of inter-ministerial cooperation, which has long been the most limiting factor for enforcing IPR in Kuwait, improved marginally in 2006. The inter-ministerial IPR committee, chaired by the Ministry of Commerce, has made information sharing somewhat more efficient, although problems remain. The Council of Ministers' decision to consolidate enforcement responsibility in the Ministry of Commerce, once the move actually happens, should significantly enhance the ability of enforcement personnel to do their jobs. In general, enforcement remains hampered by an unwillingness to prosecute Kuwaiti citizens who run piracy rings, with prosecution usually reserved for foreign nationals who work for Kuwaitis. Additionally, businesses that are closed down for IPR violations often quickly reopen and return to selling the same products.

18. (SBU) Trademark infringement has become an increasing concern, particularly with the office at the Commerce Ministry responsible for researching and registering trademark applications. Valid Kuwaiti registrations can be obtained for applications that clearly violate an existing trademark or trade dress, as long as no complaints are received over a 30-day period in which the mark is displayed in a local newspaper. Once a trademark is registered locally, it is difficult to rescind even after a complaint is made as the aggrieved party must go to court to resolve the issue. A secondary effect of this weak registration process is that Kuwait Customs is periodically forced to release products that clearly violate an existing trademark because the importer holds a valid Kuwaiti registration for the infringing mark.

19. (SBU) Kuwait Customs. In 2006, Kuwait Customs continued to be the most aggressive and effective agency enforcing IPR. The U.S. Customs advisory team, which has worked closely with Kuwait Customs since its creation in 2003-2004 and is physically located within Kuwait Customs offices, has developed a close and productive relationship with the IPR team at Customs, and much of Kuwait Customs' progress over the last few years can be directly attributed to this partnership. Kuwait Customs employs a complex tracking system to catalogue seizures and the disposition of each case; depending on the circumstance, dispositions can be a referral to the prosecutors office, penalties imposed on the spot, and confiscation and destruction of goods. Customs seizures include a wide variety of pirated and counterfeit goods, including clothing, toys, watches, optical media, and automobile parts. At times Customs allows the re-export of seized counterfeit goods, which violates Kuwait's IPR and international customs commitments, although all seized optical media are destroyed. Some IP rights holders have agreed to absorb the costs of destruction in order to avoid the goods being re-exported. In 2006, Kuwait Customs recorded 313 seizures at ports of entry. While this was down from 380 seizures in 2005, the quality and quantity of seizures have improved markedly. More than 1/3 of 2006 seizures were large busts at Kuwait's Shuwaikh sea port, as opposed to most 2005 seizures which were small quantities carried by individuals or in vehicles. Further evidence of Customs' improvement is that many importers have begun approaching Customs with examples of products they intend to import, and asking for an assessment of the products' legitimacy before placing orders in an effort to avoid IPR problems on arrival.

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10. (SBU) Ministry of Commerce and Industry. The Ministry of Commerce became more active in IPR protection after the signing of the Trade and Investment Framework Agreement in 2004. The Minister is the head of Kuwait's TIFA delegation and the Ministry is charged with heading the inter-ministerial IPR committee to oversee and coordinate all enforcement efforts. The Minister led a delegation to a second TIFA round in Washington on the margins of the Amir's visit in September, during which IPR issues were discussed with U.S. counterparts. The Ministry of Commerce has traditionally enforced IPR from a consumer protection standpoint, interdicting counterfeit products that are marketed as legitimate. Unfortunately, Commerce lacked the statutory authority to seize products that were openly sold as counterfeit. Building on the progress achieved in 2005, the past year saw continuing cooperation between the Ministries of Commerce and Information, as evidenced by Information's willingness to close down vendors identified by Commerce's inspectors. Looking ahead, the copyright enforcement team's move from Information to Commerce should alleviate many of the previous communication and jurisdictional problems, and allow for the newly structured IPR inspection units to be more effective.

11. (SBU) Ministry of Information. The Ministry of

Information's performance in 2006 can be divided into two distinct phases. The first six months of the year saw regular raids and seizures of vendors selling pirated products, with all cases referred to prosecution; the second six months of the year were spent largely treading water due to uncertainty about the impending IPR enforcement consolidation. The mid-year decision to move the copyright office and inspection teams out of Information and into Commerce, once the move is complete, will effectively end Information's role in IPR enforcement. Post sees this as a positive development. The Ministry of Information, which held primary statutory responsibility for IPR protection, was always the weakest link in Kuwait's regime, although its performance had improved markedly in recent years. The copyright office and its inspectors will move to the Ministry of Commerce and will work in conjunction with Commerce's trademark protection teams under a combined reporting hierarchy. Post was encouraged to learn that the copyright office will transfer largely intact, as the USG has invested considerable resources in training and developing its personnel over the years and plans to continue to do so in 2007.

112. (SBU) In 2006, at Post's urging the inter-ministerial IPR committee began keeping records of enforcement activities for all offices holding IPR responsibility. This move has added a measure of accountability to inspection teams' activities and has resulted in more completed seizure reports (112 in 2006, up from 60 in 2005) from inspectors. Highlights from 2006 include the seizure of more than 754,000 pirated optical media discs, including over 80,000 in one raid. Significantly, a total of 412 violators were referred for prosecution, up from 293 in 2005, 289 of which were referred for felony offenses.

WIPO Copyright Treaty and Performances and Monograms Treaty

113. (U) Kuwait is not party to either treaty.

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